

LAWDRAGON

Trial Lawyer Michael Rakower Discusses His Court Victory in Non-Profit Benefits Case



By John Ryan

Growing a successful litigation boutique requires a steady stream of victories – and often obtaining them against larger opponents. Michael Rakower, a subject of our “Lawyer Limelight” series in 2015, added to his firm’s roster of wins with his representation of Joel Levy against his former employer, Young Adult Institute Inc., in an employee-benefits case that began in 2013. Levy worked at the New York-based nonprofit for nearly 40 years, including for three decades as CEO, before retiring in 2009. He alleged in claims filed in U.S. District Court for the Southern District of New York that the Young Adult Institute improperly cut off benefits owed to him and his wife starting in 2011. (In August of that year, the New York

Times published a report critical of the compensation of Levy and other executives from the Young Adult Institute, which assists people with developmental disabilities.)

Rakower of Rakower Law PLLC prevailed in a bench trial before U.S. District Judge Paul Oetken, who awarded Levy \$14 million, and in appeals before the 2nd U.S. Circuit Court of Appeals. Young Adult Institute has filed a writ of certiorari to the U.S. Supreme Court.

Lawdragon: Can you talk a little bit about how this case came your way?

Michael Rakower: Our clients knew that the defendants would apply a scorched-earth legal strategy and they wanted to make sure that they had sophisticated counsel able to handle the pressure. They knew the case could last years and needed a law firm they could afford for the long haul. Their traditional counsel, a major law firm, recommended they hire a boutique firm, compiled a list of names for them, and hosted meetings for a “beauty contest” at their offices. We won the contest. The rest is history.

LD: What did your client do for the Young Adult Institute, and when did he retire?

MR: Joel Levy was the third employee hired at YAI at a time when it was run like a mom-and-pop shop with a budget of approximately \$250,000. He served as YAI’s CEO for 33 of his 38 years there and built the organization into a best-in-class organization providing services

to the physically and developmentally disabled in New York and beyond. When he left, the company had more than 5,000 employees and an operating budget in excess of \$250,000,000.

LD: What did he claim happened to his benefits and what did he want?

MR: State and federal regulations prevent not-for-profits from paying excessive compensation. YAI induced Joel Levy to work nearly 40 years at the company based on a promised retirement plan, which the company paid for two years before it suddenly stopped paying based on the assertion that the compensation was excessive. We brought suit to compel YAI to continue paying Levy's benefits for life and to obtain a ruling that his wife's right of survivorship was equally enforceable.

LD: The case was filed in 2013 – can you talk about a few of the hurdles or major events in the course of the litigation?

MR: YAI brought counterclaims against Joel Levy alleging damages in excess of \$20 million based on a purported scheme by Levy to enrich himself by deceiving the company and the government over the company's costs. The false allegations were designed to assassinate Levy's character in the hope that the pressure would cause him to walk away from the case. Because the claims overcame a motion to dismiss, we relied on a form of legal jiu-jitsu by bringing a motion for indemnification. We won that motion, and the company suddenly found itself in the uncomfortable position of having to pay Levy's lawyers to defend claims it could not win. YAI wisely elected to dismiss with prejudice its counterclaims and, of course, paid Levy's defense costs thus far incurred.

At about the same time, we won a motion for partial summary judgment concerning the primary liability question in the case. Many

thought the case would settle at that point. Unfortunately, that proved not to be possible. After extensive discovery, we won a second partial summary judgment motion when the defendants sought to reinterpret the plain meaning of the court's prior decision.

During discovery we obtained a trove of secret recordings YAI's board chair had made concerning YAI's efforts to prevent Levy from collecting his compensation. We also secured documents concerning a plan YAI dubbed its "Elegant Solution" against Levy, which was essentially a plan to induce the IRS and New York Attorney General's Office to launch an investigation into Levy's compensation.

Following the second round of summary judgment motions, we had a bench trial in which we won both issues in question. The defendants appealed to the Second Circuit and lost all of their arguments. They moved for reconsideration and reconsideration *en banc* and lost that too.

LD: What were some of the other challenges of the case?

MR: The case was and remains intensely emotional for our clients, who have exhausted themselves emotionally and financially in pursuit of their rights. The defendants have made use of a massive brain trust that includes the following law firms: Groom Law Group; Arnold & Porter Kaye Scholer; Morgan Lewis & Bockius; Ropes & Gray; and Epstein Becker & Green. Battling our adversary and maintaining our clients' faith in the process has been both stressful and invigorating.

LD: How was the amount of the award determined? What were the factors important to the outcome in the district court?

MR: Because the clients are entitled to a lifetime benefit to be paid semi-monthly, the

rendering of the judgment was a complicated affair that involved expert computations and a formula that provides for a lifetime of payments coupled with cost-of-living increases dependent upon a Department of Labor price index.

I would say there were three factors critical to the outcome of the case: First, Joel Levy was a highly credible witness. Second, we decided to call the other side's "star witness" as our own and then proceeded to elicit from him testimony that was deadly to YAI's position. Third, we impeached key defense witnesses with materials obtained in discovery, including the secret recordings made by YAI's board chair and documents concerning YAI's "Elegant Solution" against Levy.

LD: What were the critical issues on appeal that helped you prevail?

MR: YAI raised a laundry list of arguments on appeal, but the primary issue concerned their public policy defense, namely whether a not-for-profit organization possesses the independent right to challenge an executive's compensation after he has performed and the compensation has become due on the grounds that the not-for-profit perceives the compensation to be excessive and therefore beyond the legal limit.

LD: How is your client doing now? How is he spending his retirement or does he have any plans?

MR: Joel is nearly 75 and would like to live his golden years in comfort. He has now endured seven years without his retirement benefits but has still not yet been able to collect because YAI has done all it can to postpone his victory. Most recently, YAI obtained a stay of the Second Circuit's

mandate premised upon its intention to file a petition for writ of certiorari to the U.S. Supreme Court. But there is no quit in Joel.

He was a remarkable CEO because of his vision, creativity, and tenacity. This case marks another test of his core skill set. And then there's Judy Lynn, his wife and a co-plaintiff. Judy sees the legal issues with piercing clarity and matches Joel's fortitude step for step. They are a great match.

LD: How are things going for the firm overall? Any other major developments since we last spoke?

MR: The firm's name recognition and therefore its reach is improving. Not long ago, we were hired for a case in Florida against a private equity firm that denied our client his right to a carried interest in profits following the sale of assets to Clorox for \$700 million. Also, we were recently hired by a sizable Midwestern company concerning a dispute over executive compensation.

Structurally, we are taking steps to increase our tolerance for contingency matters by forging relationships with funding companies. We do not want money to be an impediment for clients with complicated actions that will take years to complete, and we want clients to know that we have the tolerance to stand by them from beginning to end.



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